

BELL, MCANDREWS, HILTACHK & DAVIDIAN, LLP
ATTORNEYS AND COUNSELORS AT LAW
433 CAPITOL MALL, SUITE 801
SACRAMENTO, CALIFORNIA 95814

(916) 442-7757
FAX (916) 442-7759

CHARLES H. BELL, JR.
COLLEEN C. MCANDREWS
THOMAS W. HILTACHK
BEN DAVIDIAN
JOSEPH A. GUARDARRAMA
BRIAN T. HILDRETH

PAUL GOUGH
OF COUNSEL

1441 FOURTH STREET
SANTA MONICA, CA 90401
(310) 458-1403
FAX (310) 260-2666
www.bmhlaw.com

December 26, 2002

BY FACSIMILE AND U.S. MAIL
(916) 327-2026

Mr. Mark Krausse
Executive Director
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento CA 95814

**Re: Request for Review of Executive Director's Denial of Request for
Formal Opinion – File No. O-92-348**

Dear Mr. Krausse:

This is to formally request Commission review of your December 24, 2002 denial of my request for formal opinion, addressed to Commission General Counsel Luisa Menchaca in my letter dated December 17, 2002 (copies of denial and request letters attached.)

While I appreciate your statement of the reasons for the denial of the opinion request, I believe the formal opinion vehicle presents the best approach to addressing this issue, for the following reasons.

First, the December 17, 2002 letter contained sufficient operative facts and raised a significant question concerning registration and reporting requirements concerning one aspect of the "issue advocacy" question, to warrant issuance of a formal opinion.

Second, the opinion request has become a favored vehicle for addressing legal and policy issues during the current Chair's tenure, and a very useful one for those subject to regulation by the Commission. (See, e.g., *In re Hanko*, 16 FPPC Ops. 1, O-02-088 (2000); *In re Olson*, 15 FPPC Ops. 13, O-01-112 (2001); *In re Pelham*, 15 FPPC Ops. 1,

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O-00-274 (2001); *In re Lucas*, 14 FPPC Ops. 15, O-00-157 (2000); *In re Solis*, 14 FPPC Ops. 7, O-00-104 (2000); *In re Galligan*, 14 FPPC Ops. 1, O-00-045 (2000); *In re Wood*, 13 FPPC Ops. 21, O-99-315 (2000); *In re Tobias*, 13 FPPC Ops. 5, O-99-156 (1999); *In re California Republican Party*, 13 FPPC Ops. 1, O-99-047 (1999).)

Indeed, one of the distinguishing features of the current Commission has been its willingness to depart from reliance upon staff advice letters to issue cogent, formal opinions that reflect the considered view of the Commissioners.

In virtually all of these opinions, the opinion question presented an important issue with respect to the interpretation of an existing regulation, policy or statute. In several instances, the question presented a conflict between statutes, or between a case and a statute or regulation. These issues are presented by the instant request.

As a background matter, it is most significant that the Commission itself joined in the strategies of both the Appellant, Governor Gray Davis Committee, and interested ethics agencies, seeking either Supreme Court depublication or review of the *Governor Gray Davis Committee v. American Taxpayer Alliance* opinion. Further, the decision itself either struck or rendered of doubtful constitutionality a critical sentence of an FPPC Regulation (18225(b)(2)) interpreting Government Code Section 82025.

Third, the opinion request does not constitute an "overbroad request for the interpretation of the Act in general terms." The opinion request presented factual questions: an existing entity wishes to undertake activity that would, under current regulations, but not the *Davis* opinion, require it to register, report and disclose the identities of donors.

If the entity were required to comply with registration and disclosure requirements, such compliance would also require disclosing the activity of donors who have not understood their donations to require disclosure. (See, e.g., *NAACP v. Alabama* (1958) 357 U.S. 449.) Required compliance also could subject such donors potentially to other reporting requirements, such as major donor committee reporting under Government

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Code Section 82013(b) and chapter 4 of the Act. Compliance could require a host of other disclosures, including but not limited to Government Code Sections 84305 and 84501-84507 disclosure. Failure to do so could result in penalties up to \$5,000 per violation or three times the amount of activity not reported.

All of this potential activity – and exposure – follows from whether the second sentence of Regulation 18225(b)(2) is determined to be enforceable in this situation.

Fourth, that an opinion request may also require the Commission to consider broader regulatory amendments is not uncommon. (See, e.g., *In Re Hanko, supra*, and *In Re Lucas, supra*.) Moreover, this request does not address every aspect of the “issue advocacy” and “express advocacy” subjects.

Finally, this subject is exactly the stuff of which advice letters and opinions are made: the party seeking authoritative Commission guidance is at risk. Going through the staff advice process would, in all likelihood, lead to the need for later Commission consideration, via reconsideration of the staff advice or opinion.

The issue is one particularly suited to Commission determination in the first instance, because the staff would be reluctant to deal with the issue presented without obtaining the Commission’s guidance. Dealing with the matter by regulation presents other problems, in particular, the question whether the deletion of the second sentence of Regulation 18225(b)(2) would result in Commission invalidation of other provisions of the Act which have not been the subject of authoritative appellate decision.

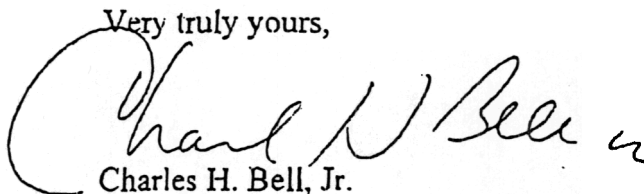
Thus, as a matter of administrative economy as well, grant of the request for an opinion – and issuance of an opinion – seems the best approach. While I appreciate that the Commission has a heavy load of regulatory matters on its plate, and that the current fiscal crisis may impose a burden on many activities it must undertake, I believe this opinion request is timely and worthy of its consideration.

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Thank you and the Commission for consideration of review of the request for opinion. If I can provide any other information you may require to facilitate such review, please let me know.

Very truly yours,

A handwritten signature in cursive script, reading "Charles H. Bell, Jr.", with a large, stylized initial "C" at the beginning.

Charles H. Bell, Jr.

CHB:sa
Enclosures